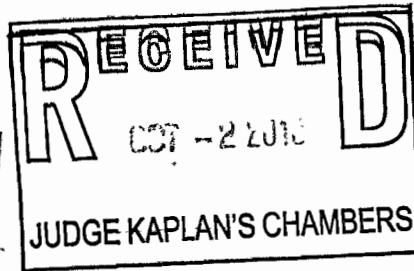
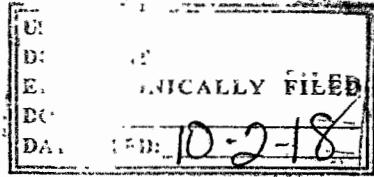


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September 28, 2018

BY EMAIL AND BY HAND

The Honorable Lewis A. Kaplan
United States District Court for the
Southern District of New York
Room 1940
500 Pearl Street
New York, NY 10007

Re: *United States v. James Gatto, et al., Case No. S2 17-cr-686 (LAK),
The Parties' Joint Proposed Description of the Charges.*

Dear Judge Kaplan:

We write jointly on behalf of the Government and Defendants James Gatto, Merl Code, and Christian Dawkins to respectfully submit the parties' joint proposed description of the charges for the Court's consideration for potential use in introducing the matter to prospective jurors. To the extent it is helpful, the parties propose the following language:

This is a criminal case. There are three defendants in this case, James Gatto, Merl Code, and Christian Dawkins.

The charges in this case relate to an alleged scheme to defraud certain universities. The Government alleges that the defendants made and caused to be made payments to the families of student-athletes, that these payments were concealed from certain universities, and that these payments principally caused the universities to issue athletic-based financial aid to student-athletes who were ineligible to compete in basketball games sponsored by the National Collegiate Athletic Association (or "NCAA") under false and fraudulent pretenses. The Indictment contains three counts. Count One charges all three defendants with the crime of conspiracy to commit wire fraud and the Government alleges that the defendants and others agreed to defraud North Carolina State University, the University of Louisville, the University of Kansas, and the University of Miami in connection with this alleged conspiracy. Count Two charges all three defendants with the

substantive crime of wire fraud and involves an alleged scheme to defraud the University of Louisville. Count Three charges solely defendant James Gatto with the substantive crime of wire fraud and involves an alleged scheme to defraud the University of Kansas.

The defendants deny all the charges, and they've each entered a plea of not guilty. That's why we are having a trial.

Although the foregoing description is not a complete description of the wire fraud charges, the parties believe that the proposed language is sufficient for the purposes of introducing the case to the prospective jurors.

In addition, we write to advise the Court of an agreement the parties have reached not to use the word "bribe" or elicit the word "bribe" from witnesses to describe payments made to athletes and/or their family members, including the payments alleged in the Second Superseding Indictment. In the original Indictment ("Ind."), filed on November 7, 2017, Dkt. 39, the Government characterized these payments as "bribes." (*See* Ind. ¶¶ 1, 26, 29, 31, 32(b), 36, 37). Subsequently, the Government filed the First Superseding Indictment ("S1") on April 10, 2018, Dkt. 137, which omitted any and all reference to the word "bribe", and which instead used the word "illicit" to characterize the payments at issue. (*See* S1 ¶¶ 1, 3, 30, 33, 40, 42(a), 44). The Second Superseding Indictment ("S2"), filed on August 14, 2018, Dkt. 170, likewise omits reference to the word "bribe," and refers to the payments at issue as "illicit." (*See* S2 ¶¶ 1, 3, 29, 32, 39, 41(a), 43).

Because the Government has agreed not to use the word "bribe" at trial to characterize the subject payments, the parties respectfully request that the Court also refrain from characterizing the payments alleged in the Second Superseding Indictment as "bribes" in whatever description of the charges the Court provides to the jury panel.

Respectfully submitted,



Michael S. Schachter

cc:
(by email)

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